

IN THE WESTERN AUSTRALIAN ENERGY REVIEW BOARD

No. 3 of 2008

B E T W E E N

INDEPENDENT MARKET OPERATOR

Applicant

and

ALINTA SALES PTY LTD  
ACN 089 531 984

Respondent

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**REASONS FOR DECISION OF THE ENERGY REVIEW BOARD  
MADE 18<sup>th</sup> DECEMBER 2009**

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**Summary**

- 1 The respondent has admitted that it breached clause 7.10.1 of the *Wholesale Electricity Market Rules* (“Rules”) by exceeding its scheduled energy output for Unit 1 at its Pinjarra faculty (“Unit 1”) in three consecutive trading intervals on 16 September 2008 (“the contravention”).
- 2 The task for the Board is to determine the orders that it will make pursuant to Regulation 33 of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (“Regulations”) in respect of the contravention.
- 3 The Board considers that the following orders should be made:
  - (a) the respondent do pay the applicant a penalty of \$17,500 in respect of the contravention; and
  - (b) the respondent do pay the applicant’s costs, to be agreed or assessed by the Board.
- 4 The Board’s reasons are set out below.

### **The parties**

- 5 The applicant is the Independent Market Operator, which is charged with various tasks under the Electricity Industry Act 2004 (“Act”), the Regulations and the Rules, including policing compliance with the Rules.
- 6 The respondent is a “market participant” within the meaning of that expression in Rules. It produces electricity which it sells into the South West Interconnected System (“SWIS”). Unit 1 is a gas powered electricity co-generation facility at Pinjarra.
- 7 Although the respondent is the market participant and the party to these proceedings, Alcoa World Alumina Australia (“Alcoa”) is responsible, as between the respondent and Alcoa, for the day to day management of the facility. It appears that respondent is “not involved in the operation of the facility”.<sup>1</sup>

### **The legislative framework**

- 8 The Rules require market participants to submit on a daily basis a Resource Plan Submission providing information about the electricity which it proposes to produce during the nominated day. The submission may then be accepted by the applicant. Once accepted by the applicant, a market participant is required by Rule 7.10.1 to adhere to its Submission.
- 9 Regulation 32 enables the applicant to apply to the Board if there has been a contravention of the Rules.
- 10 Regulation 33(1) empowers the Board to make the following orders in respect of a contravention of the Rules.
- (1) If the Board determines that a participant has contravened a provision of the market rules, the Board may make one or more of the following orders —
    - (a) if the provision is a civil penalty provision — an order that the participant pay to the IMO a civil penalty of an amount that does not exceed the maximum civil penalty amount prescribed for the contravention in the Table to Schedule 1;

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<sup>1</sup> Affidavit of Troy Edwin McKelvie, sworn 9 June 2009, at [6].

- (b) an order that the participant cease, within a specified period, the act or omission constituting the contravention;
- (c) an order that the participant take such action, or adopt such practice, as the Board requires for remedying the contravention or preventing a recurrence of the contravention;
- (d) an order that the participant implement a specified program for compliance with the market rules;
- (e) if the participant is a registered participant — an order suspending the participant's registration for a specified period or suspending any other specified right of the participant under the market rules for a specified period;
- (f) if the participant is a registered participant — an order that the participant's generating system or transmission or distribution system, or other facilities or loads, be disconnected;
- (g) if the participant is a registered participant — an order that the participant's registration be cancelled.

11 Regulation 33(4) requires the Board to have regard to “all relevant matters” before making an order under Regulation 33(1). However, that sub-regulation also goes on to specify particular matters which the Board is required to take into account. These are:

- “(a) the nature and extent of the contravention;
- (b) the nature and extent of any loss or damage suffered as a result of the contravention;
- (c) the circumstances in which the contravention took place;
- (d) whether the participant has previously been found by the Board in proceedings under the Act to have engaged in any similar conduct; and
- (e) the consequences of making the order.”

12 Clause 7.10.1 is a “civil penalty provision” for the purposes of the Regulations by virtue of Regulation 30 and Schedule 1 of the Regulations. The relevant item in Schedule 1 specifies that the maximum

penalty for a first contravention of this Rule is \$50,000 and for a second, \$100,000.

### **Procedural background**

- 13 The proceedings were commenced by an application dated 22 December 2008.
- 14 The Chairman of the Board, as presently constituted, was appointed by the Attorney – General on 12 February 2009. The Chairman in turn appointed the other members on 20 February 2009.
- 15 The application, as originally framed, expressed the respondent’s contravention by comparing the respondent’s scheduled output against the respondent’s actual output at 3 specific points in time. The application alleged that:
- (a) at 10pm on 16 September 2008, the output of the respondent’s facility was 121MW compared to its output of 88MW scheduled in its resource plan;
  - (b) at 10.30pm, the output was 88MW, compared to the scheduled output of 48MW; and
  - (c) at 11.00pm, the output was 50MW compared to the scheduled output of 0MW.
- 16 A preliminary hearing took place on 11 March 2009. At the preliminary hearing, the respondent formally admitted that it had contravened clause 7.10.1. Directions were made for the exchange of material relevant to the exercise of the Board’s functions under Regulation 33.
- 17 At the time these proceedings were commenced, the applicant also commenced proceedings against the respondent in respect of a different contravention of the Act, no 1 of 2008. The Board in no 1 of 2008 was differently constituted to the Board in the present proceedings. Although Mr Collins and Mr Mathieson were members of the Board in 1 of 2008, Mr Ellis was not. Mr AG Castledine chaired the Board in 1 of 2008. To assist in the efficient conduct of the combined proceedings, the hearings

were scheduled to coincide. With the consent of the parties (in both proceedings) Mr Ellis attended during the various hearings in 1 of 2008.

18 There was a failure to comply with the procedural directions. A further procedural hearing took place, at which an affidavit of Troy Edwin McKelvie sworn on 9 June 2009 and filed in No 1 of 2008 was admitted, by consent of the parties, in these proceedings. That affidavit dealt with the difficulties which lead to the respondent's failure to comply with the procedural directions made by the Board.

19 The parties filed an agreed statement of facts on 27 March 2009.

20 Prior to the hearing, the Board requested that the parties provide additional materials, which it considered likely to be relevant to the hearing, including a copy of the respondent's Resource Plan for Unit 1 for 16 September 2008 ("Resource Plan").

21 The matter came on for hearing on 11 August 2009. The hearing in these proceedings took place immediately after the hearing in 1 of 2008.

22 At that hearing, an order was made by consent of the parties that the evidence in 1 of 2008 be admitted in these proceedings, in so far as that evidence was relevant to these proceedings. Some of the evidence in 1 of 2008 related to general operation of the market and the training of the facility operators by the respondent. No useful purpose would have been served by requiring the parties to repeat that evidence in these proceedings.

23 The Board also admitted the Resource Plan into evidence, by consent.

24 At this stage of the hearing, the Board raised with the parties a difficulty with the formulation of the application and with the statement of agreed facts. As indicated above, the application referred to the contravention in terms of the discrepancy between the Resource Plan and the actual output at three particular points in time, 10pm, 10.30pm and 11.00pm. However, the respondent's output, as identified in the Agreed Statement of Fact did not result in a contravention of the Resource Plan, properly understood in light of the requirements of the Rules for Resource Plans. After having the opportunity to consider the matter, the parties sought the

25 On 28 August 2009 the applicant submitted an amended application and an amended statement of agreed facts. The amended application put the respondent's contravention in terms of the total amount of energy (MWh) power produced during the relevant trading periods. The respondent admitted the contravention formulated in this way. The parties provided some additional affidavit evidence.

26 The hearing resumed on 4 September 2009.

27 The applicant relied on the following affidavits:

- (a) Lewis Alan Mitchell sworn on 24 February 2009 ("Mitchell");
- (b) Neil Hay sworn 29 April 2009 ("Hay"); and
- (c) Alistair Ian Butcher sworn 25 August 2009 ("Butcher").

Mr Mitchell was a Senior Systems Operations Controller for System Management of Western Power Corporation and was the senior officer working in the control room for System Management on the relevant evening.<sup>2</sup> Mr Hay was the Manager, Market Operations of the applicant. Mr Butcher was the Market Strategic Development Manager for System Management, which is a "segregated business unit of Western Power Corporation".

28 The respondent relied on the following affidavits:

- (a) William Peter Truscott sworn on 26 June 2009 ("Truscott"); and
- (b) Mr Truscott sworn on 3 September 2009 ("Exhibit 7").

The affidavit of Troy Edwin McKelvie sworn 9 June 2009 filed in 1 of 2008 was also referred to in the respondent's written submissions. Mr Truscott's position is "Manager, Energy Market Operations" of the respondent. Mr McKelvie is Legal Counsel for the respondent.

29 Messrs Hay, Butcher and Truscott attended the hearing and were questioned orally. Mr Mitchell was not available for cross examination.

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<sup>2</sup> Mitchell at [10].

No objection was taken to the admission of his affidavit, or, indeed any of the affidavits.

- 30 During the course of the hearing of no 1 of 2008, an issue arose about the relationship between the respondent and Alcoa and, in particular, the extent to which the respondent could exercise effective control over the activities of Alcoa, in so far as they related to the supply of power to the SWIS. The respondent undertook to provide certain materials relevant to this issue on a confidential basis. This information was provided on about 23 October 2009 within an additional affidavit of Troy Edwin Mckelvie sworn on 23 October 2009. The Board also sought further information about the ramp down rates of the Unit. This information was provided by the respondent on 1 December 2009.

### **Consideration**

- 31 It is convenient to deal with each of the matters specified in Regulation 33 in turn before considering whether there are any other matters which need to be taken into account.

### **The nature and extent of the contravention**

- 32 The contravention alleged against the respondent was that:
- (a) during the period from 10.00 pm to 10.29 pm the respondent produced 61.658 MWh compared to the scheduled output of 44 MWh;
  - (b) during the period from 10.30 to 10.59pm the respondent produced 44.731MWh compared to the scheduled output of 24MWh; and
  - (c) during the period from 11.00pm to 11.29 pm, the respondent produced 25.601MWh compared to the scheduled output of 0MWh.

The total amount of the excess production was 63.99MWh.<sup>3</sup>

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<sup>3</sup> For the assistance of persons who might read these reasons without a technical background, a “watt” is the standard unit to describe power, or the rate at which energy is produced or used. A watt is equivalent to a joule per second. A “joule” is the standard unit of energy. A megawatt (“MW”) is a million watts. A megawatt hour (“MWh”) describes a quantity of energy, not a rate of production of energy, and is equivalent to the production of a million watts for an hour.

- 33 The respondent admitted the contravention.
- 34 Mr Butcher gave oral evidence that actual variations from planned generation are not infrequent. He also indicated that such variations generally involved under production rather than over production of energy. He stated that the IMO did not take action in respect of production discrepancies of less than 10MWh in one 30-minute trading interval or which lasted for less than a single trading interval.<sup>4</sup> The contravention significantly exceeded this limit.
- 35 The applicant did not contend that the discrepancy between the planned and actual production placed any facilities or the SWIS electricity supply at any significant risk. Although the contravention did not place the system or electricity supplies at risk, the effective operation of the SWIS and the supply of electricity within required frequency tolerances depends upon systematic compliance with the Rules. The Board must regard contraventions of the Rules seriously.

#### **Nature and extent of any loss or damage**

- 36 The applicant did not contend that any person, other than the applicant suffered any loss as a result of the contravention.
- 37 The overproduction occurred outside peak hours. As a consequence, the respondent did not receive any additional payment for the additional electricity produced. Mr Hay provided calculations which put a dollar value on the electricity produced of \$8883.96.

#### **Circumstances in which the contravention occurred**

- 38 The contravention occurred in the following circumstances.
- 39 On 15 September 2008, the respondent submitted a Resource Plan Submission, which was accepted by the applicant.
- 40 Rule 6.11.1 sets out the information which must be contained in the Submission. The submission must cover a period of 24 hours, for the

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Megawatt hours are used in the generation industry for convenience. A megawatt hour is 3,600,000,000 joules. A megawatt hour of energy can be produced over any period of time, for example, the generation of 2 megawatts for half an hour.

<sup>4</sup> At Transcript p62. The transcript incorrectly refers to megawatts, not megawatt hours.

nominated day, breaking up the 24 hour period into 48 successive half hour trading intervals. The submission must identify, in respect of each half hour interval, the energy to be sent out in megawatt hours (MWh). The submission must include the target megawatt output at the end of each trading interval and the synchronising and desynchronising times for each facility included in the submission.<sup>5</sup>

41 The Resource Plan included the following information:

<b>Trading Interval</b>	<b>Time Period corresponding to the trading interval</b>	<b>Quantity of energy to be produced (MWh)</b>	<b>Target Output (at end of the period (MW)</b>
21-2	9.30 – 10.00	69	138
22 – 1	10.00 – 10.30	44	88
22 – 2	10.30 – 11.00	24	48
23 - 1	11.00 – 11.30	0	0

42 In evidence, Mr Butcher stressed that the Resource Plan did not stipulate particular levels of production at particular points in time during the half hour trading intervals, provided that the total produced in the trading period reflected the Resource Plan.<sup>6</sup> It was necessary for the respondent to maintain an average rate of output, which was sufficient to produce the scheduled amount of energy. The respondent could have substantially exceeded the average production rate in a trading interval at several points within the interval without breaching the Resource Plan, provided that output was correspondingly lower at other points of time in that trading interval.

43 The respondent's contravention involved producing more electricity than scheduled during the period from 10.00 pm until 11.30 pm on 16 September 2009. The parties agreed that the extent of production and overproduction was as follows:

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<sup>5</sup> Rule 6.11.1.

<sup>6</sup> Mr Butcher gave evidence that the target output was not significant for market purposes.

<b>Trading Period</b>	<b>Time Period corresponding to the trading period</b>	<b>Production (MWh)</b>	<b>Overproduction (MWh)</b>
22 – 1	10.00 – 10.30	61.658	17.658
22 – 2	10.30 – 11.00	44.731	20.731
23 - 1	11.00 – 11.30	25.601	25.601
<b>Total</b>			<b>63.990</b>

44 The nature of the respondent's contravention can be seen most clearly from the graph annexed to the letter from the applicant's solicitors to the Registrar of the Board dated 3 September 2009 ("Production Graph").<sup>7</sup> A copy of this graph is an annexure to these reasons. The ordinate axis is graduated in megawatts. The abscissa shows time, in 10 minute intervals for the four 30 minute trading intervals from 9:30 pm till 11:30 pm on the 16 September 2008. The heavy curved line at the top of the graph shows the average megawatt output over consecutive at 4 second periods.<sup>8</sup> The area under this line and bounded by the ordinate axis and the abscissa is the total energy sent out in the four trading intervals. The areas occupied by the large grey bars show the anticipated energy sent out in each 30 minute trading interval based on the Resource Plan, assuming that the megawatt output shown at the top of each bar is maintained during each trading interval. The anticipated megawatt hour energy sent out in each trading interval is the megawatts at the top of each bar multiplied by ½ hour, that is 138 megawatts times ½ hour, or 69 megawatt hours for the first bar and so on for the other three trading intervals.<sup>9</sup>

45 SWIS system controllers have available to them the Resource Plans submitted in respect of each facility on SWIS, via computer displays in the control room. Mr Mitchell examined a screen display reflecting the

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<sup>7</sup> Exhibit 5A. The graph was substantially the same as the graph which was Annexure AIB2 to Butcher. The abscissa in AIB2 showed time by reference to the internal time denominations used by the SWIS, rather than in "ordinary" time.

<sup>8</sup> Transcript page 50 –line 7

<sup>9</sup> The bars cannot be a realistic representation of actual production levels. It takes generation facilities some time to change the rate of production to move from one output level to another. The bars assume instantaneous transition from, say, 138MW to 88MW at 10pm.

Resource Plan. At about 10.03pm, he had a conversation with an operator in the respondent's powerhouse, identified on the transcript as "Craig". Mr Mitchell asked whether the operator was "heading down". The operator indicated that the facility was "on target" for 10.30pm.

46 It appears from the Production Graph that the facility started to substantially reduce production about this time. However, shortly before 10.10 pm, the reduction in megawatts stopped, and production was sharply increased to about the 138MW level by about 10.30pm.

47 At 10.33pm Mr Mitchell had a conversation with a different operator. During the 10.33pm conversation, Mr Mitchell indicated that he had expected production to be substantially lower, about 88MW at 10.25. There was some uncertainty during the conversation about the appropriate level. The operator indicated that he would get this supervisor to call Mr Mitchell.

48 At 10.38pm, "Peter" from the Powerhouse called Mr Mitchell. During the course of that conversation, Mr Mitchell stated his opinion that the facility was "half an hour out". In response, "Peter" stated:

"... it looks like um, we were given a schedule that's, um, not quite what the IMO says we should be doing..."

49 The conversation continued:

"Powerhouse – So what we are doing, is trying to rush the thing though, um.

SOCC To me, if you've got a problem with your machinery, I am quite happy to allow you to be off at 23.30 at zero megawatts at that stage. I do not want you to damage that equipment, um, would if we tried to get back on your Resource Plan. Would that cause you problems that could cause that equipment to become ...

Powerhouse - There is a potential for that to occur. Cause we are not getting the correct soaking into the unit on the way down."

Mr Mitchell subsequently gave a direction to the facility to “keep coming off”, with the expectation that the facility would not be producing at all at 23.30 hours.

50 Mr Truscott explained in his oral evidence the technical limitation on the ability of the facility to reduce production mentioned by the operator. At paragraph 11(g) of Truscott, Mr Truscott gave evidence that an automated control system had been installed which prevented the facility decreasing its production at more than 20MW per half hour. The Board requested, and was provided with, information about the rates at which production from the gas turbine generators could be reduced (“ramp down rate”). These rates were considerably greater than 20MW per half hour. However, it appears that the limitation on the ramp down rate derived from the heat recovery steam generator (“HRSG”) associated with gas turbine generator, rather than the gas turbine generator itself.

51 The 20MW per half hour ramp down limit would require 7 hours for the combined gas turbine and HRSG to reduce production from 138MW to 0MW and cease production. In the event on the 16 October 2008 the facility decreased production from almost 140MW at 10.30 pm to 0MW at 11.30 pm, or 140 MW in one hour without risk or damage to the facility. The 16 October 2008 Resource Plan for this facility submitted by the respondent could not be achieved with the limiting 20MW per half hour control system installed on the facility.

52 The respondent asserted that the output above that shown in the Resource Plan resulted from a misunderstanding of the Resource Plan. It argued that the fundamental problem was that the respondent’s, or more accurately, Alcoa’s operators, mistakenly set the megawatt and megawatt hour levels for the facility a half hour late. Mr Truscott gave evidence that there was a conversation amongst the operators during which the Resource Plan was discussed and the wrong understanding of the Plan reached.<sup>10</sup> Presumably this occurred at about 10.10 pm, when Unit 1 stopped reducing its production and started to increase it.

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<sup>10</sup> Transcript at p44.

53 The respondent asserted that a couple of factors contributed to this misunderstanding and the overproduction:

- (a) A “servo seal” had failed on the other unit at the Pinjarra facility at about 2pm on 16 September 2009.<sup>11</sup> It appears that some oil was spilled as a result, and that the episode had the potential to cause fire at the Facility. There was no evidence whether this was a theoretical or a real possibility. In any event, the “servo” had to be repaired. This diverted operator resources and attention from Unit 1.
- (b) The operators had to enter the Resource Plan manually, rather than being able to rely upon the automated system. It appears that the ramp down rate embodied in the Resource Plan exceeded the permitted rates under the automated system. The respondent contended that the operators were not familiar with the manual entry of the Resource Plan, although it also contended that they had been adequately trained in the manual entry of the resource plans. The respondent argued that the operators were, to some extent, reliant on the automated system. The automated system was not based on site. The respondent ran the automated system from its premises.<sup>12</sup>

The Board accepts that these events occurred.

54 At paragraph 11(l) of his first affidavit, Mr Truscott sets out assertions derived from his discussions with Alcoa representatives to the effect that System Management failed to adequately explain the Resource Plan to its operator and did not provide sufficient advice to the operator to start ramping down. In his oral evidence, Mr Truscott explicitly disavowed reliance upon these assertions.<sup>13</sup> Mr Truscott was correct to do so, in the Board’s opinion. There was no evidence to suggest that Mr Mitchell contributed to the misunderstanding of the respondent’s Resources Plan.

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<sup>11</sup> Truscott at 11(c) – 11(e).

<sup>12</sup> Transcript at p 35.

<sup>13</sup> Transcript at p46 and 48.

- 55 The respondent also argued that SWIS and the facility had been placed under additional stress by reason of the Varanus Island explosion on 3 June 2008. It argued that the shortage of gas caused by the explosion meant that the unit was brought on and off line more frequently than would have been common, or intended, for the units. The units were intended to generally be operated in continuous base load mode. While the Varanus Island explosion may have changed the normal operating mode, it was not contended that the nature and extent of the planned ramp down of the unit on 16 September 2008 resulted from a shortage of gas. Mr Truscott gave evidence that the ramp down identified in the Resources Plan occurred for Alcoa's operational reasons. He was not able to specify those reasons precisely.
- 56 It is the Board's view that the operators' lack of experience with overriding the automatic control system on the facility to comply with the Resource Plan contributed to the over production from the facility on the 16 October 2008, along with the failure of the servo seal.

### **Similar conduct**

- 57 The Board is required to take into account whether the respondent has been found by the Board to have engaged in similar conduct. In the Board's opinion this issue is different from the question whether there has been a contravention of the particular provision of the Rules for the purpose of calculating the maximum penalty. It was not suggested by the applicant that penalties had previously been imposed for contraventions of Rule 7.10.1.
- 58 At paragraphs [12] to [19] of his affidavit, Mr Hay dealt with 4 prior occasions on which the respondent had contravened Rule 7.10.1. Although the respondent admitted that the circumstances were as outlined in the applicant's letters to the respondent of 17 September 2007, 1 November 2007, 7 November 2007 and 14 November 2007, this conduct is not relevant to Regulation 33(4)(d).

### **The consequences of making the order**

- 59 Regulation 33(1)(e) enables the Board to consider the adverse impact on a market participant which an order under Regulation 33 might have. However, this Regulation also requires the Board to consider the deterrent effect that any order may have.
- 60 It was accepted by both parties that imposing a penalty within the range permitted by the Regulations would not have any material impact on the respondent.
- 61 The correspondence between the parties about prior contraventions of the Rules annexed to the affidavit of Mr Hay suggest that there is some need for a penalty which specifically deters the respondent from future contraventions.

### **Other matters**

- 62 The Board is also required to take into account “all relevant matters” when making an order.
- 63 First, the respondent admitted the contravention at the first opportunity. It has co-operated in the investigation of the contravention and the conduct of the proceedings.
- 64 Second, the respondent has now taken steps to minimise the risk of a further contravention. During the week prior to the hearing on Friday 4 September 2009, Mr Truscott and Mr McKelvie gave a training presentation to staff Alcoa responsible for operation of the facility. It appears that not all the operators were able to attend because they work shifts. The respondent asked Alcoa that the written version of the presentation be circulated to the absent operators. The respondent has also modified the format of its precedent resource plan so that the output reflects more accurately the average energy production over the course of trading intervals. The respondent also installed an automated control system, which enables loading of Resource Plans from the respondent’s offices and once loaded, for the Unit to be ramped up and down in accordance with the corresponding Resource Plans unless over-ridden by the unit operator. The respondent’s recent training of Alcoa personnel shows recognition of the defects in the systems which were in operation

at the time of the contraventions and a commitment to improvement for which the respondent should receive credit by way of a reduced penalty.

- 65 Training after the contravention is not, of course, the same thing as proper training prior to the contravention. Mr Truscott gave evidence about the training of Alcoa operators prior to the incident. It appears that the last training prior to the incident took place in January 2007.<sup>14</sup> There was no evidence of any further training prior to 16 September 2008. The training activities can fairly be described as “ad hoc” and reactionary rather than systematic.
- 66 Third, the Board is somewhat troubled by the limited involvement of Alcoa in these proceedings. The Board accepts that the respondent and Alcoa are, within the constraints of the applicable legislation, free to enter into commercial arrangements allocating responsibility for operation of Unit 1 between themselves. However, at an earlier stage of the proceedings the respondent sought an extension of time in substance because Alcoa had not provided information to him in a timely fashion.<sup>15</sup> In his affidavit, Mr McKelvie stated “Alinta is not involved in the operation of the Facilities”, including Unit 1.<sup>16</sup> Similarly, Mr Truscott’s affidavit set out various matters about the circumstances of the contravention on which the respondent relied. That material was hearsay. Direct evidence was not available from Alcoa personnel as to the events on the ground. Given that the respondent was legally represented, and so would have been aware of the desirability of providing first hand evidence of events on site, the Board infers that this occurred notwithstanding the desires of the respondent.
- 67 These matters suggest that the respondent may have experienced practical difficulties procuring full co-operation from Alcoa. This was an issue which was raised by the Board in proceedings 1 of 2008. The respondent indicated that negotiations were on foot between the respondent and Alcoa as to the terms of the contract between them and that this was an

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<sup>14</sup> See Transcript in Proceedings 1 of 2008 at p38 – 40.

<sup>15</sup> See affidavit of McKelvie in Proceedings 1 of 2008, para 7.

<sup>16</sup> At para 6.

issue between them. The Board does not seek to judge the commercial terms of the arrangement between the respondent and Alcoa. The Board does note, for future reference, that it is the responsibility of the market participant to ensure compliance with the Rules by persons who provide services underpinning its participation in the market.

### Summary

- 68 The considerations discussed above may be summarised as follows:
- (a) the non-compliance with the Resource Plan was substantial and continued over an extended period of time. However, the SWIS was not put at risk by the over production of energy associated with this particular non-compliance incident.
  - (b) the overproduction was caused by a misunderstanding of the Resource Plan at a time when a breakdown on site had diverted operators' attention from the resource plan and inexperience overriding the automatic control system installed on the facility;
  - (c) the maximum penalty for the contravention is \$50,000;
  - (d) the respondent has co-operated with the applicant by admitting the contravention; and
  - (e) since the contravention, the respondent has taken steps to reduce the prospect of a recurrence of the contravention by amending its proceedings and undertaking training of Alcoa's operators.
- 69 In all the circumstances, the Board considers that a penalty of \$17,500 is appropriate.
- 70 The respondent should also pay the applicant's costs to be agreed or assessed by the Board.

Date:

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Expert Member

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Expert Member

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Presiding Member



APJ MW's for 16/09/2008  
With Res Plan embedded

